STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

[redacted] **2022**
Signature Confirmation

Client # [redacted]
Request # 183756

NOTICE OF DECISION

PARTY

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2021, the Department of Social Services (the "Department") issued a Notice of Action ("NOA") to [redacted] (the "Appellant") denying her participation in the Community First Choice ("CFC") program, based on the Appellant not meeting institutional level of care pursuant to federal law.

On [redacted] 2021, the Appellant requested an administrative hearing to contest the Department's denial of her eligibility to participate in CFC.

On [redacted] 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [redacted] 2021. The hearing was scheduled to be held at the Appellant's home.

On [redacted] 2021, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing at the Appellant's home.

The following individuals were present at the hearing:

[redacted] Appellant
[redacted] Appellant's husband
Diermalys Sepulveda, Agency on Aging of South Central Connecticut
James Hinckley, Hearing Officer

By mutual agreement, the hearing record was held open for the Department to provide the criteria it uses to determine whether an individual meets institutional level of care. The hearing record closed on [redacted], the date the Department provided the information.

STATEMENT OF THE ISSUE

Whether the Department correctly determined the Appellant is not eligible to participate in CFC due to not meeting the criteria for institutional level of care.

FINDINGS OF FACT

1. The Appellant is a 33-year-old female (DOB [redacted]/88), and is a participant in the Medicaid program, as administered by the Department. (Ex. 1: Universal Assessment form, Appellant's testimony)

2. The Appellant lives in the community with her husband. (Appellant's testimony)

3. The Appellant has primary diagnoses of acute intermittent porphyria, agoraphobia, and rheumatoid arthritis. (Ex. 1: Universal Assessment, [redacted]/21)

4. The Area Agency on Aging of South Central Connecticut ("AASCC") is the Department's contractor, for purposes of the CFC program, for assessing the level of care and service needs of those individuals that live within its region. (Hearing Record)

5. On [redacted] 2021, the Appellant participated in a CFC comprehensive assessment to determine her eligibility for CFC services. The assessment was conducted by a social worker from AASCC who met the required qualifications as defined in the Department's State Plan. The assessment included the following components: 1) evaluation of physical status; 2) evaluation of mental status, and; 3) functional assessment. (Hearing Record)

6. A comprehensive assessment utilizes a Universal Assessment form as a data collection tool to determine an individual's levels of need related to core Activities of Daily Living ("ADLs"), Instrumental Activities of Daily Living ("IADLs") and health-related tasks for CFC services. (Hearing Record)

7. The Appellant's [redacted] 2021, assessment determined that she required extensive assistance with the ADL of toileting, required cueing/supervision with the ADL of bathing, and was independent with the ADLs of dressing, transferring, and eating. (Ex. 1, Ex. 2: Universal Assessment Outcome Form)

8. The criteria used by the Department in the evaluation of whether an individual would, in the absence of home services, require care at the institutional level is the existence of conditions requiring substantial daily assistance with personal care as

evidenced by one of the following need levels: 1.) Supervision or cueing with ≥ 3 ADLs (includes 1 hands-on combination) + one need factor or, 2.) Hands-on assistance with ≥ 3 ADLs or, 3.) Hands-on assistance with ≥ 2 ADLs + one need factor or, 4.) Minimally Impaired Cognition + Supervision or cueing with ≥ 2 ADLs or, 5.) A cognitive impairment which requires daily supervision to prevent harm. Need factors include: 1.) Rehabilitative Services such as physical therapy, occupational therapy, etc.; 2.) Behavioral need for supervision to prevent harm; 3.) Medication supports beyond set ups for administration of physician ordered medications. (Ex.6: Level of Care criteria provided by the Department)

9. The assessment performed on [redacted] 2021, determined that the Appellant did not meet the criteria required for institutional level of care. (Facts #7, #8)

10. On [redacted] 2021, the Department issued an NOA to the Appellant denying her eligibility to participate in CFC because she did not meet institutional level of care. (Ex. 5: NOA)

11. The Appellant disputes the findings reached by the Department regarding her level of ADL needs; she reports that in addition to requiring extensive assistance with the ADL of toileting she also requires extensive assistance with the ADLs of bathing and dressing. (Appellant's testimony)

12. The Appellant does not receive any rehabilitative services. (Appellant's testimony, Hearing Record)

13. The Appellant has no significant cognitive issues. (Appellant's testimony, Hearing Record)

14. If the Appellant required substantial assistance with the ADLs of toileting, bathing, and dressing, as she testified, she would meet the Department's criteria for institutional care by requiring hands on assistance with ≥ 3 ADLs. (Fact #8)

15. The primary source of information collected for the assessment is self-report. (Ms. Sepulveda's testimony)

16. The AASCC social worker that performed the [redacted] 2021, assessment added certain relevant comments on the Universal Assessment form including, for the ADL of bathing, "She doesn't want to get in shower due to depression. Her husband goes in bathroom with her to watch her shower. She stated she is a fall risk due to AIP. Husband supervises.", and, for the ADL of dressing, "She will have her husband get her clothes ready for her due to acute intermittent porphyria. She stated she has pins and needles and it's difficult to get her clothes from the closet." (Ex. 1)

17. The AASCC social worker also recorded certain personal observations on the Universal Assessment form that were relevant to the evaluation. (Ex. 1)

18. The Appellant's testimony is in conflict with some of her answers that were recorded at the [redacted] 2021, assessment. The Appellant denies that her condition has changed since the assessment was performed. (Hearing Record)

19. The ADL needs of the Appellant, specifically the ADLs of bathing and dressing, cannot be determined without further assessment. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes ("Conn. Gen. Stat.") authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.

2. Title 42 of the Code of Federal Regulations ("C.F.R.") Section 441.500(a) provides that, "This subpart implements section 1915(k) of the Act, referred to as the Community First Choice option (hereafter Community First Choice), to provide home and community-based attendant services and supports through a State plan."

3. "Community First Choice is designated to make available home and community-based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living (ADLs), instrumental activities of daily living (IADLs), and health-related tasks through hands-on assistance, supervision, or cueing." 42 C.F.R. § 441.500(b)

4. "*Activities of daily living* (ADLs) means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring. 42 C.F.R. § 441.505

5. "*Instrumental activities of daily living* (IADLs) means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community." 42 C.F.R. § 441.505

6. 42 C.F.R. § 441.510 provides as follows:

> To receive Community First Choice services and supports under this section, an individual must meet the following requirements:
>
> (a) Be eligible for medical assistance under the State plan;
> (b) As determined annually-
> (1) Be in an eligibility group under the State plan that includes nursing facility services; or

(2) If in an eligibility group under the State plan that does not include such nursing facility services, have an income that is at or below 150 percent of the Federal poverty level (FPL). In determining whether the 150 percent of the FPL requirement is met, States must apply the same methodologies as would apply under their Medicaid State plan, including the same income disregards in accordance with section 1902(r)(2) of the Act; and,

(c) Receive a determination, at least annually, that in the absence of the home and community-based attendant services and supports provided under this subpart, the individual would otherwise require the level of care furnished in a hospital, a nursing facility, an intermediate care facility for individuals with intellectual disabilities, an institution providing psychiatric services for individuals under age 21, or an institution for mental diseases for individuals age 65 or over, if the cost could be reimbursed under the State plan. The State administering agency may permanently waive the annual recertification requirement for an individual if:

(1) It is determined that there is no reasonable expectation of improvement or significant change in the individual's condition because of the severity of a chronic condition or the degree of impairment of functional capacity; and

(2) The State administering agency, or designee, retains documentation of the reason for waiving the annual recertification requirement.

(d) For purposes of meeting the criterion under paragraph (b) of this section, individuals who qualify for medical assistance under the special home and community-based waiver eligibility group defined at section 1902(a)(10)(A)(ii)(VI) of the Act must meet all section 1915(c) requirements and receive at least one home and community-based waiver service per month.

(e) Individuals receiving services through Community First Choice will not be precluded from receiving other home and community-based long-term care services and supports through other Medicaid State plan, waiver, grant or demonstration authorities.

7. 42 C.F.R. § 441.535 provides as follows:

States must conduct a face-to-face assessment of the individual’s needs, strengths, preferences, and goals for the services and supports

provided under Community First Choice in accordance with the following:

(a) States may use one or more processes and techniques to obtain information, including telemedicine, or other information technology medium, in lieu of a face-to-face assessment if the following conditions apply:

(1) The health care professional(s) performing the assessment meet the provider qualifications defined by the State, including any additional qualifications or training requirements for the operation of required information technology;
(2) The individual receives appropriate support during the assessment, including the use of any necessary on-site support-staff; and
(3) The individual is provided the opportunity for an in-person assessment in lieu of one performed via telemedicine.

b) Assessment information supports the determination that an individual requires Community First Choice and also supports the development of the person-centered service plan and, if applicable, service budget.

(c) The assessment of functional need must be conducted at least every 12 months, as needed when the individual's support needs or circumstances change significantly necessitating revisions to the person-centered service plan, and at the request of the individual.

(d) Other requirements as determined by the Secretary.

8. **The Department correctly performed a face-to-face assessment of the Appellant that was in accordance with federal regulation.**

9. **The Appellant's eligibility for CFC hinges on the results of her assessment of functional need which determines whether in the absence of CFC-provided home and community-based supports the Appellant would otherwise require care at the institutional level.**

10. **If the Appellant requires extensive assistance with only one ADL, as the Department determined in its [redacted] 2021, assessment, she does not qualify to participate in CFC because she does not have the level of functional needs that would require institutionalization in the absence of CFC services.**

11. **If the Appellant requires extensive assistance with three or more ADLs, as she testified at the hearing, she qualifies to participate in CFC because she meets the criteria set by the Department for the level of functional needs that would require institutionalization in the absence of CFC services.**

12. **The hearing record is absent the information that would be required to resolve the conflict between the Appellant's testimony and the results of her [redacted] 2021, assessment.**

13. **For purposes of CFC, an assessment must be performed by a health care professional who meets the provider qualifications defined by the State in its Medicaid State Plan.**

14. **The Department must perform a new assessment of the Appellant, in accordance with the requirements in its State Plan, to determine whether she meets CFC criteria.**

DECISION

The Appellant's appeal is **REMANDED TO THE DEPARTMENT FOR FURTHER ACTION.**

ORDER

1. The Department must perform a new assessment of the Appellant to determine whether she meets CFC criteria.

James Hinckley
James Hinckley
Hearing Officer

Cc: hearings.commops@ct.gov

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3725.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.